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September 25, 2014

VIA ELECTRONIC DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in MB Docket No. 14-57, Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

On September 23, 2014, Delara Derakhshani of Consumers Union, John Bergmayer of Public Knowledge, Matt Wood of Free Press, Lauren Wilson of Free Press, Todd O'Boyle of Common Cause, and Danielle Kehl of the New America Foundation's Open Technology Institute (collectively, "Public Interest Representatives") met with Gigi Sohn, Special Counsel for External Affairs, Office of the Chairman; Eric Feigenbaum, Director of Outreach and Strategy, Office of Media Relations; Hillary Burchuk, Attorney, Office of General Counsel; William P. Rogerson, Senior Economist, Office of General Counsel (by telephone); Stevan Jechura, Intern, Office of the Chairman; Regina Black, Intern, Office of the Chairman; Leah Rabkin, Intern, Office of the Chairman; Fanilla Cheng, Intern, Office of the Chairman.

During the meeting, Public Interest Representatives discussed Comcast's relationship to online video. Most of Comcast's revenue comes from pay TV, yet most of its growth is in broadband. Comcast therefore has the incentive to embrace online video – but only in ways that it controls. This strategy allows it to embrace the growth in online video while protecting its legacy business and primary revenue stream.

Public Interest Representatives explained that the primary threat to online video from this merger is the gatekeeper power Comcast would have post-transaction: it would be better able to leverage interconnection agreements to disadvantage online video competitors, use more restrictive MFNs to limit consumer choice in video providers, and squeeze programmers and raise costs for its rivals. But Comcast's moves to control online video can happen in other significant ways, as well. When Comcast exempts its own online video services from data caps, this is a way of pushing customers towards their own online video offerings instead of those of its competitors. When Comcast refuses to authenticate TV Everywhere apps on some platforms but not others, it exerts its control over the very devices that consumers use to access content for which they have already paid. The merger would increase Comcast's ability and incentive to engage in behaviors of this kind, as well as adding to its already-large ability to act as a gatekeeper for the entire video industry.

Public Interest Representatives also expressed concern that Comcast is adept at finding loopholes and methods to technically comply with merger conditions even as it flouts their spirit. For example, Comcast was able to argue that complying with the "peer programming" condition in the Comcast/NBCU merger required that it have access to its competitors' confidential commercial data. This undermined the condition by reducing the number of online video providers who could take advantage of it, since no "peers" of Comcast/NBC would sell the online providers programming knowing that the terms would be examined by Comcast. Its experience with this condition should be a warning to the FCC of merger conditions that are too difficult to enforce.

Public Interest Representatives also urged the Commission to analyze the competitive impacts of this transaction on the nationwide market for what Free Press, for example, termed "advanced" broadband services and distribution – in other words, service capable of at least 10 Mbps or even 25 Mbps. These speed thresholds are relevant to the broadband market definition in the context of this proceeding, since broadband at that speed is what is necessary for online video to fully replace an average household’s current cable video consumption. Recent remarks from Chairman Wheeler give good reason for considering these speeds as the cutoff for adequate broadband today, and for rejecting Comcast's claims that DSL and mobile broadband options are part of the same product market.

Finally, Mr. Bergmayer discussed the privacy implications of the merger. He noted that Comcast would have the ability to create a profile of millions more Internet and video users based on their Internet usage and viewing habits, and that it has stated its aim of increasing its presence in the advertising market. He urged the Commission to consider the effects of this merger would have on the privacy of Comcast and Time Warner Cable subscribers.

This letter is being filed pursuant to Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206.

Respectfully submitted

/s/ Delara Derakhshani

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cc: Gigi Sohn
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Hillary Burchuk
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